

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of CHRISTOPHER RICE, KODI  
CHESNEY, TYLER CHESNEY, TIA CHESNEY  
and TABITHA CHESNEY, Minors.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

v

TRACY CHESNEY,  
  
Respondent-Appellant,

and

KEVIN CHESNEY and BRYANT SILLMAN,  
  
Respondents.

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CHESNEY, TYLER CHESNEY, TIA CHESNEY  
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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

v

KEVIN CHESNEY,  
  
Respondent-Appellant,

and

UNPUBLISHED  
June 26, 2001

No. 229717  
Monroe Circuit Court  
Family Division  
LC No. 98-013687-NA

No. 229874  
Monroe Circuit Court  
Family Division  
LC No. 98-013687-NA

TRACY CHESNEY and BRYANT SILLMAN,

Respondents.

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Before: Sawyer, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Respondents Tracy Chesney and Kevin Chesney appeal as of right from the order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j).<sup>1</sup> Respondent Tracy Chesney argues that the trial court's order terminating her parental rights was barred by res judicata and collateral estoppel. She also challenges the sufficiency of the evidence in support of termination. Respondent Kevin Chesney has not filed a separate brief of his own, but merely adopts respondent Tracy Chesney's brief.

I

Respondents contend that the trial court's opinion terminating their parental rights erroneously conflicts with factual findings made in a prior opinion that denied a petition to terminate their parental rights. We disagree.

Res judicata bars further litigation of a controversy when (1) the prior action was decided on the merits, (2) the matter in the second case was or could have been resolved in the first; and (3) both actions involved the same parties or their privies. *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). Collateral estoppel bars re-litigation of factual issues that have already been decided. For the doctrine of collateral estoppel to apply, there must be a question of fact essential to the judgment that was actually litigated and determined by a valid and final judgment. The parties must have had a full opportunity to litigate the issue, and there must be mutuality of estoppel. *Minicuci v Scientific Data Management, Inc*, 243 Mich App 28, 32; 620 NW2d 657 (2000).

Here, res judicata does not apply because the second termination petition was based on events and circumstances that occurred after the first termination hearing. Moreover, although the trial court's decision was a final decision as to the first termination petition, it was not a final decision on the trial court's adjudication over the children.

In order for collateral estoppel to apply here, respondent Tracy Chesney would have to show that the trial court made findings of fact in its second decision that conflict with findings already made in the first decision. She has failed to do so. The question whether drug abuse caused respondents to neglect their children in 1998 was a question of fact essential to the second

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<sup>1</sup> The parental rights of Christopher Rice's father, Bryant Sillman, were not terminated and he is not a party to this appeal.

judgment. However, contrary to Tracy Chesney's argument, this question was not actually determined by the final judgment in the first petition.

Tracy Chesney's argument is based on the trial court's statement that it "can not [sic] take judicial notice of the fact that substance abuse in and of itself is the reason why the children were not adequately supervised nor why they experienced a high rate of truancy." This statement was not, however, a finding that respondents' drug abuse was unrelated to their failure in 1998 to supervise the children and send them to school. Rather, the trial court made this statement in the context of discussing the shortcomings of the caseworker's treatment plan.

The trial court was disturbed because the caseworker failed to incorporate the recommendations in the psychological evaluation. The trial court found that respondents' continued substance abuse could not serve as clear and convincing evidence for termination where petitioner failed to address the totality of respondents' problems and even withheld information that respondents might have profitably used in seeking treatment. The trial court clarified this position with the statement "[i]t is the failure of the FIA to document the parents' compliance with the substance abuse treatment programs and the withholding of the recommendations by Dr. Sharon Ridella-Mehlos which prevents this Court from finding that this statutory provision is supported by 'clear and convincing' evidence."

At the conclusion of the second termination hearing, the trial court was satisfied that petitioner had presented clear and convincing evidence to terminate respondents' parental rights. The court noted that Daily had provided sexual abuse counseling to Tracy Chesney and that Knott had offered domestic violence counseling to Kevin Chesney, but that both parents stopped coming to appointments. The trial court further found that the caseworker, Randi Sheldon, had performed satisfactorily since the first termination hearing while respondents made no meaningful attempts to address their parental deficiencies. Most importantly, the trial court commented on evidence that respondents' drug abuse caused the disruptions in their lives that interfered with their ability to parent:

It should come as no surprise that the Respondents' inability to tackle a substance abuse problem they have had since ages 17 and 24 respectively has caused chaos in their lives. Their problems have been manifested in the form of jail sentences, frequent changes in homes, difficulty in maintaining employment, and the loss of custody of the children. Incarceration can not [sic] be the method of ensuring that they will remain drug free. The future possibility of incarceration, especially for Mrs. Chesney, is likely and therefore once again one or both parents will be removed from their children's lives.

The trial court's decision to terminate parental rights does not upset any final determination made in the prior decision denying termination. In rendering its second decision, the trial court considered evidence of respondents' conduct since the December 1999 decision and found that respondents' substance abuse did indeed interfere with their parenting, that Sheldon had offered an array of services designed to address the substance abuse and other problems, and that respondents failed to avail themselves of these services and free themselves from drugs. Tracy Chesney's res judicata/collateral estoppel argument therefore fails.

## II

Respondent Tracy Chesney also argues that the trial court erred in finding clear and convincing evidence of termination, and in failing to find that termination was not in the children's best interests. Her arguments regarding the sufficiency of the evidence apply only to herself, and not to respondent Kevin Chesney.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence established that Tracy Chesney continues to abuse drugs; indeed, she admitted in her own testimony that a crack-induced high can last as long as several hours in which she is incapacitated as a parent. Furthermore, we find that the evidence did not show that termination of Tracy Chesney's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating Tracy Chesney's parental rights to the children.

Affirmed.

/s/ David H. Sawyer  
/s/ Richard Allen Griffin  
/s/ Peter D. O'Connell